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13

14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **OAKLAND DIVISION**

18 IN RE CALIFORNIA BAIL BOND
19 ANTITRUST LITIGATION

20
21 THIS DOCUMENT RELATES TO:
22 ALL ACTIONS

Master Docket No. 19-cv-00717-JST

CLASS ACTION

**DEFENDANTS' POSITION ON DISCOVERY
PENDING RULING ON MOTION TO DISMISS**

Judge: Hon. Jon S. Tigar

1 In response to the Court's directive at the August 26, 2020 motion hearing and subsequent
2 Order (Dkt. 132), the Parties met and conferred regarding their respective suggestions on discovery in
3 this matter. Because of the timing and some differences in their proposed approaches, the Parties
4 agreed it would be best if they submitted their respective proposals separately and concurrently. This
5 is Defendants' proposal:

6 1. Discovery should be *partially* stayed while the current motion to dismiss is pending. It
7 will be extremely burdensome to proceed with unrestricted discovery, which is not justified when
8 many Defendants might be dismissed from the case for the second time. *See Bell Atl. Corp. v.*
9 *Twombly*, 550 U.S. 544, 554, 560 n.6 (2007) (discovery where conspiracy claimed over seven years
10 would be "a sprawling, costly, and hugely time consuming undertaking"). However, the Parties have
11 already begun meeting and conferring on a number of discovery issues, and while discovery should
12 otherwise be stayed, Defendants agree that these efforts can continue to move forward. Specifically:

- 13 a. The Parties will conduct the Rule 26(f) conferences they have already
14 scheduled, both on "global" issues applicable to all Defendants (set for
15 September 2, 2020) and thereafter for individual defendants (by September 4,
16 2020), subject to the provisions stated in this document. The Parties will
17 attempt to reach agreement on a stipulated protective order and an agreement
18 on ESI.
- 19 b. The Parties will serve their Rule 26 initial disclosures on September 18, 2020,
20 according to the agreed Stipulation and Order Re Rule 26 Disclosures entered
21 on August 20, 2020 (Dkt. 130.)
- 22 c. Plaintiffs have served Requests for Production of Documents on all
23 Defendants. Defendants will provide their written responses and objections
24 on the current due date (October 2); however, Defendants should not be
25 required to incur the expense of reviewing and producing documents until the
26 pleadings against them have been resolved, as set forth below.

27 By completing these preliminary steps, discovery will be able to rapidly proceed with respect
28 to any claims and Defendants that remain after the Court rules on the pending motion, while not

1 imposing the extreme costs and expenses of wide ranging discovery on parties that may be dismissed
2 from the case.

3 2. The scope of discovery after the Court resolves the pending motion should depend on
4 how the Court rules:

5 a. If all Defendants are dismissed with leave to amend, then discovery should be
6 stayed through the resolution of any motion to dismiss a Third Amended
7 Complaint. Plaintiffs will at that point have failed twice to satisfy the *Twombly*
8 standard, and there is no reason why they should be allowed to proceed with
9 discovery when there is little reason to believe their claims would ever make it
10 past the pleading stage.

11 b. If some Defendants are dismissed without prejudice, while the case proceeds
12 against other Defendants, then:

13 i. For Defendants still in the case, party discovery will re-open on the
14 Court's ruling on the motion to dismiss.

15 ii. For Defendants dismissed without prejudice, party discovery will not
16 re-open as to them unless Plaintiffs file a Third Amended Complaint,
17 and the Defendant either files an answer or the Court holds that the
18 Plaintiffs have stated a claim against that Defendant. Based on their
19 meet and confer with Plaintiffs, the Parties agree that if the Court
20 dismisses some but not all of the Defendants, the dismissed Defendants
21 would not be parties to the case and so Plaintiffs would have to use third-
22 party subpoenas consistent with and pursuant to Fed. R. Civ. P. 45.
23 Defendants agree that this Court would have jurisdiction to resolve any
24 disputes related to the subpoenas.

1 Dated: August 28, 2020

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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)

I, Beatriz Mejia, attest that concurrence in the filing of this document has been obtained from the other signatories. Executed on August 28, 2020, in San Francisco, California.

/s/ Beatriz Mejia
Beatriz Mejia